

## **LEGAL RESPONSE TO DOMESTIC VIOLENCE IN KYRGYZSTAN**

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## ABSTRACT

*“Violence against women is a manifestation of the historically established unequal balance of power between men and women, which has led to domination of women and discrimination against women by men, as well as hindering the full advancement of women, and that violence against women is one of the fundamental social mechanisms by which women are forced to occupy a subordinate position compared to men”<sup>1</sup>.*

The Kyrgyz Republic, being a member of the international treaties, has undertaken obligations to align the legal basis to eliminate gender-based discrimination and violence against women and children.

The Human rights watch World report 2020 highlights the violence against women and children as a long-term human rights concern<sup>2</sup>. Taking into account the worldwide impact of the COVID-19 pandemic on the life and freedoms of humankind, it is important to note the negative impact on discrimination against the rights of women and children, as well as the worsening situation of domestic violence. According to the official statistics provided by the Office of the Prosecutor General, the cases of the domestic violence registered in the Unified register of crimes and minor criminal offences increased by 65 %, i.e. 1404 cases in 2019 vs. 2319 in 2020.

Major laws regulating this subject matter are Criminal procedure code, Code on misconduct, the law “On Safeguarding and Protection from Domestic Violence”. The latter promulgated by the President in 2017, is considered one of the most progressive in the post-soviet region and contains norms that envisage better procedural guarantees and safeguards for the survivors of domestic violence, including restraining orders. Restraining order is a document that provides state protection to a survivor of domestic violence and entails the application of measures of influence defined by this Law to a person who has committed domestic violence. However, the established practice and statistical indicators, as well as, number of media reports on brutal cases of domestic violence, indicate that the legal and policy response to the issue of domestic violence is insufficient.

The number of legal and policy level inconsistencies, like difference in definitions in the Criminal procedure Code and the Law of the Kyrgyz Republic “On Safeguarding and Protection from Domestic Violence”, outdated instructions (Standard operating procedures) for

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<sup>1</sup> UN General Assembly, Declaration on the Elimination of Discrimination against Women, 7 November 1967, A/RES/2263(XXII)

<sup>2</sup> <https://www.hrw.org/world-report/2020/country-chapters/kyrgyzstan#7ee1b1>

the police officers, lack of instruments to monitor the execution of the terms of the protection order, insufficient statistical data, lack of coordination with the social services do not allow for comprehensive and efficient work on combating domestic violence.

This capstone project will:

- analyze the scale of the domestic violence in Kyrgyzstan (statistics and individual cases in media);
- analyze the legal framework for curbing domestic violence: Criminal procedure code, Code on misdemeanors and the law "On Safeguarding and Protection from Domestic Violence";
- analyze international practice specifically on implementation of measures like restraining order, qualification of domestic violence legally, interagency cooperation;
- include recommendations to improve the implementation of the law (practical side based on the analysis of the legal framework); map of stakeholders interaction in cases of domestic violence.

This capstone project builds upon the existing body of literature and analysis of inconsistencies in the laws of the Kyrgyz Republic legal response to domestic violence at the pre-trial stage. The focus of this project is on providing procedural guarantees and protection mechanisms to the victim of domestic violence at the early warning, prevention and pre-trial stage of criminal investigation. The analysis was complemented by interviews with practicing lawyers, NGOs working in the field of combating domestic violence, and Ministry of Interior. The departments of the Ministry of interior were contacted in the framework of functional analysis of the Bishkek Police Department conducted with the team of the “Rule of Law Programme in the Kyrgyz republic – phase 2” in March – July 2020. The study also incorporates the successful experiences of foreign countries to provide recommendations for improving legal measures to provide effective legal response to domestic violence.

## **CHAPTER 1. INTRODUCTION: ANALYSIS OF THE SITUATION: RESEARCH QUESTION, RESEARCH PUZZLE INCLUDING LEGAL OVERVIEW AND STATISTICAL OVERVIEW**

The Kyrgyz Republic ratified the UN Convention on the Elimination of All Forms of Discrimination (CEDAW) against Women in 1996 which was historically justified by an acute problem of women's rights not only in the country, but also in almost all areas of life around the world. Women fought for the right to vote, for access to education, equal working conditions, etc. After accession countries commit to implementation of the provisions into national legislation, as well as measures to effectively protect women and girls rights.

The provisions of the UN Declaration on the Elimination of Violence against Women (DEDAW) sets universally recognized principles and norms of international law, the preamble states that “violence against women is a manifestation of the historically established unequal balance of power between men and women, which has led to domination of women and discrimination against women by men, as well as hindering the full advancement of women, and that violence against women is one of the fundamental social mechanisms by which women are forced to occupy a subordinate position compared to men”<sup>3</sup>.

DEDAW requires participating States to condemn violence against women and not invoke any custom, tradition or religious motivation in order to evade their commitment to eradicate violence as well as give due attention to prevention, investigation and punishing acts of violence against women in accordance with national legislation; guarantee women who have been subjected to violence, with the access to justice mechanisms and fair and effective remedies for harm caused<sup>4</sup>.

The Kyrgyz Republic is a member state to many important and fundamental international agreements in the field of human rights protection, implementing the rights and freedoms of citizens, and is obliged to ensure the protection of these rights and freedoms.

The principle of equality of all before the law and the court, guaranteed by the Constitution of the Kyrgyz Republic, must be embodied in adopted laws and implemented by all state bodies so that this constitutional value can be felt by every person living in the territory

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<sup>3</sup> UN General Assembly, Declaration on the Elimination of Discrimination against Women, 7 November 1967, A/RES/2263(XXII)

<sup>4</sup> Ibid Article 4.

of the Kyrgyz Republic<sup>5</sup>. All rights, freedoms and duties established by the Constitution must be realized by every person and citizen without hindrance, regardless of their gender and status in society and family<sup>6</sup>. In this regard, all state institutions, acting in accordance with their competence established by laws, must maintain this equality and not allow discrimination.

At the same time, the practice of applying the legislation shows the existence of cases of domestic violence, which is aggravated with the development of legal nihilism in society, lack of systematic work to improve the legal culture of citizens of the Kyrgyz Republic. Cases of physical and sexual violence against children and women, which often appear in the media and on the Internet, create in society well-founded expectations of concrete and effective actions on the part of the relevant state bodies to prevent such violence.

According to the National Statistics Committee, women most often suffer at the hands of their husbands or relatives: in 2018, 95% of reported cases of domestic violence were committed by men<sup>7</sup>. There is no separate statistics on murders as a result of domestic violence, but according to the Women's Democratic Network Foundation, in 2018 alone, 62 women died in Kyrgyzstan due to the fault of a relative or partner<sup>8</sup>. The COVID-19 exacerbated the situation: as a result of the imposed quarantine, when many women were locked in the same room with aggressors, the number of reports of domestic violence in Bishkek alone in three months, according to the Ministry of Internal Affairs, increased by 65% compared to last year<sup>9</sup>. Crisis centers were forced to work remotely and could only advise victims over the phone. "The quarantine and the state of emergency only intensified the 'illness' of the institution of the family in the country," noted one of the authors of the Law "On Safeguarding and Protection from Domestic Violence", MP Natalya Nikitenko<sup>10</sup>.

<sup>5</sup> P.3 of Article 16 of the Constitution of the Kyrgyz Republic. [https://www.legislationline.org/download/id/3116/file/Kyrgyz%20Constitution%20-%20adopted%20by%20referendum%2027%20Jun2010\\_f\\_EN.pdf](https://www.legislationline.org/download/id/3116/file/Kyrgyz%20Constitution%20-%20adopted%20by%20referendum%2027%20Jun2010_f_EN.pdf)

<sup>6</sup> Ibid, p. 4 of Article 16

<sup>7</sup> “Около 80 процентов обратившихся в 2018 году по фактам семейного насилия – женщины” [About 80 percent of those who applied for cases of domestic violence in 2018 are women], National Statistical Committee of the Kyrgyz Republic, (December 27, 2019.) URL: <http://www.stat.kg/ru/news/okolo-80-procentov-obrativshih-sya-v-2018-godu-po-faktam-semejnego-nasiliya-zhenshiny/>

<sup>8</sup> “Новое масштабное исследование рисует страшную картину насилия против женщин” [New large-scale study paints a dire picture of violence against women], UN News, (March 9, 2021). URL: <https://news.un.org/ru/story/2021/03/1398312>

<sup>9</sup> Фактов семейного насилия в Кыргызстане стало на 65 процентов больше [Facts of domestic violence in Kyrgyzstan increased by 65 percent] 24.kg News (April 22, 2020). URL: <https://24.kg/obschestvo/150800 faktov semejnogo nasiliya vkyrgyzstane stalo na65protsentov bolshe/>

<sup>10</sup> “«Необходимо выработать нулевую терпимость к насилию в сердцах людей», - Н.Никитенко”, [“It is necessary to develop zero tolerance for violence in the hearts of people”, - N. Nikitenko], UNDP Kyrgyzstan (August 4, 2020). URL: <https://www.kg.undp.org/content/kyrgyzstan/ru/home/presscenter/articles/2020/08/nikitenko-we-must-instill->

While pandemic exacerbated the problem of domestic violence, under the pressure of NGOs, Parliament adopted amendments according to which an offender could be arrested for 48 hours in case of high risk of danger. Physical violence could be stopped with a protective order, due to limited opportunities of imposing restraining measures and vague formulation of conditions of protective orders.

The main legislation in the field of prevention and elimination of domestic violence consists of the Criminal Code, the Criminal Procedure Code, the Misdemeanor Code, the Law "On Safeguarding and Protection from Domestic Violence". The latter promulgated by the President in 2017, is considered one of the most progressive in the post-soviet region and contains norms that envisage better procedural guarantees and safeguards for the survivors of domestic violence, including protection orders<sup>11</sup>. Article 1, paragraph 3 says that "a temporary protection order is a document that provides state protection to a victim of domestic violence and entails the application of measures of influence determined by this Law against a person who (a member / equivalent family member<sup>12</sup>) has committed domestic violence"<sup>13</sup>.

Despite significant improvements in the law, the media reports and statistical overviews provide bleak picture of brutal violence.

The list of loopholes in the legal response to domestic violence includes difference in definitions in the criminal legislation and in the Law "On Safeguarding and Protection from Domestic Violence", the internal instructions of the Ministry of Internal Affairs and the Ministry of Social Protection are outdated, the tools for monitoring the execution of terms of protection order are primitive, the statistics of the General Prosecutor's Office, the Ministry of Internal Affairs and the National Statistical Committee differ and do not allow for comprehensive policy response, coordination between responsible state agencies dealing with domestic violence is weak.

In addition, the involved state agencies face insufficient funding and infrastructure. According to the Kyrgyz office of UN-Women, the law requires 25 million KGS (more than \$ 300,000) annually to implement the law - this money should be used to help victims of domestic

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[zero-tolerance-to-violence.html?fbclid=IwAR2\\_x-5IHkvBbNyyST1ivCg2gPYQ3qd7JibYrMLyKzAPNN0WE4rEC\\_jrDok](https://www.bbc.com/russian/features-52733129)

<sup>11</sup> N.Ryskulova. "'Территория семьи". В Кыргызстане приняли жесткий закон против домашнего насилия, но не решили проблему" ["Territory of the family". Kyrgyzstan adopts tough law against domestic violence, but does not solve the problem], BBC News, Bishkek (May 20, 2020). URL: <https://www.bbc.com/russian/features-52733129>

<sup>12</sup> P. 7 of Art.1 Law No. 63 of 27 April 2017 "On Safeguarding and Protection from Domestic Violence".

<sup>13</sup> Ibid, P. 1 of Art.1

violence in crisis centers, as well as to develop correctional programs for perpetrators<sup>14</sup>. But according to Kyrgyz office of UN-Women in 2008 the Kyrgyz Government allocated only 25%<sup>15</sup>, and taking into account current COVID-19 and huge budget deficit, the state will not be able to cover necessary funds.

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<sup>14</sup> N.Ryskulova. “"Территория семьи". В Кыргызстане приняли жесткий закон против домашнего насилия, но не решили проблему” ["Territory of the family". Kyrgyzstan adopts tough law against domestic violence, but does not solve the problem], BBC News, Bishkek, May 20, 2020. URL: <https://www.bbc.com/russian/features-52733129>

<sup>15</sup> Ibid

## CHAPTER 2. BACKGROUND ON KYRGYZSTAN

The legislation of the Kyrgyz Republic regulating cases of domestic violence consists of the Constitution of the Kyrgyz Republic, laws and by-laws. In accordance with the Constitution of the Kyrgyz Republic, human rights and freedoms are the highest value; no one can be discriminated against on the basis of gender; men and women have equal rights and freedoms, equal opportunities for their realization<sup>16</sup> and guarantees "the protection of his rights and freedoms provided for by the Constitution, laws, international treaties to which the Kyrgyz Republic is a party, as well as generally recognized principles and norms of international law<sup>17</sup>."

According to the Law of the Kyrgyz Republic "On Safeguarding and Protection from Domestic Violence" dated April 27, 2017 No. 63, domestic violence is deliberate acts of a physical, psychological, economic nature or their threat, as well as a neglect committed by one family member towards another member. families. Thus, the Law defines the following forms of domestic violence: physical, economic and psychological violence and neglect.

The main initiator and engine for the adoption of the Law "On Safeguarding and Protection from Domestic Violence" in 2017 were NGOs. Civil society in the Kyrgyz Republic is very active in reviewing legislation, as well as providing recommendations. In addition, all the support to victims of violence: hotlines, shelter, psychological and legal support is provided by representatives of NGO. 16 crisis centers are currently supported by civil society organizations amounting 98% of financial contribution, and only 2.3% s covered by State<sup>18</sup>.

According to various studies of public organizations<sup>19</sup>, as well as media, Internet publications, number of cases of sexual and domestic violence against women and underage girls has increased over the past three years. Cases of domestic violence have become more frequent, the number of cases of polygamy, early marriage, sexual harassment has increased, and "bride kidnapping" has increased.

After the announcement of a lockdown in the Kyrgyz Republic in 2020, according to UN Women, almost 80 percent of women were forced to stay at home and look after children and do housework or work remotely. Unfortunately, during the pandemic, the facts of violence

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<sup>16</sup> Ibid Preamble

<sup>17</sup> Ibid Article 40

<sup>18</sup> Annual report 2019. Crisis center Sezim. URL: [http://sezim.org/wp-content/uploads/2020/06/report\\_2019\\_en.html](http://sezim.org/wp-content/uploads/2020/06/report_2019_en.html)

<sup>19</sup> URL: <http://reforma.kg/article/nasilie-v-otnoshenii>

against women and children increased. According to the statistics of the Ministry of Internal Affairs, 196 women were killed. Unfortunately, the problem of domestic violence is not at a priority. In June 2020, Kyrgyzstanis were shocked by a video in which a husband mocks his wife in the southern region by hanging tires and pouring cold water on her just because she was late home from the guests.

In Bishkek on March 8, 2020, feminist movements organized a peaceful Women's Solidarity March, which was coordinated with the local authorities<sup>20</sup>. But the march did not started as the Kyrk Choro movement<sup>21</sup> attacked the protesters. After lengthy negotiations and objections from international organizations, the police were forced to release all the detainees.

The way law enforcement agencies apply legislation, as well as shortcomings in the Laws, are vehemently reflected in society and in their behavior. Citizens, seeing that it is possible to avoid punishment through a different interpretation of the law, as well as loopholes in the legislation, repeat violence over and over again. This entails the corruption of the law enforcement system as a whole, as well as the perception of violence as a norm or tradition. An already vulnerable group, due to historical preconditions and traditional approaches to the role of women, became subject to greater discrimination and violence during the COVID-19 pandemic.

According to a study by Penal Reform International, women accused of murdering a relative or partner who were humiliated or beaten are found guilty of murder. In Kyrgyzstan, there is no legal provision for self-defense as a mitigating circumstance in murder cases. This means that women accused of murdering relatives or spouses who abuse or attack them are often found guilty of premeditated murder<sup>22</sup>.

According to the National Statistical Committee of the Kyrgyz Republic, in 2014-2019, 111.632 facts were registered against women (crimes against sexual inviolability, forced marriage, crimes against personality, and harm to health)<sup>23</sup>. However, only 27.326 citizens

<sup>20</sup> International Women's Day: Rights activists attacked and detained. DW News. (08.03.2020) URL: <https://www.dw.com/en/international-womens-day-rights-activists-attacked-and-detained/a-52682833>

<sup>21</sup> Anna Lelik, Kyrgyzstan: Nationalist Vice Squad Stirs Controversy. Eurasianet, (February 10, 2015) URL: <https://eurasianet.org/kyrgyzstan-nationalist-vice-squad-stirs-controversy>

<sup>22</sup> E.Asanbaeva, Kyrgyzstan: Failing Victims of Domestic Violence. With no legal provision for self-defence as a mitigating factor, women who kill their relatives are almost always found guilty. Institute for War and Peace Reporting 18 September 2019 URL: <https://iwpr.net/global-voices/kyrgyzstan-failing-victims-domestic-violence>

<sup>23</sup> National Statistical Committee of the Kyrgyz Republic. URL: <http://stat.kg/en/statistics/prestupnost/>

applied to the courts of aksakals<sup>24</sup> and crisis centers on domestic violence<sup>25</sup>. At the same time, the statistics of the Ministry of Internal Affairs of the Kyrgyz Republic show that only 27.326 cases were registered issuing the protection order<sup>26</sup>. There were instituted criminal cases sent to court on the facts of domestic violence, only 1.267<sup>27</sup>.

It can be summed up that data shows only a small part of the victims file applications, and even a smaller part reaches the courts.

According to the practice of court proceedings, victims trust more women lawyers and judges, since it is easier and more convenient to disclose their pain to women. For this reason, many victims do not bring their cases to trial (since most staff of the Ministry of the Internal Affairs are men). In the Kyrgyz Republic, in such cases, crisis centers or centers for the protection of the rights of women and children, which provide first legal aid on a free basis (pro bono), are very helpful.

### **CHAPTER 3. ANALYSIS OF THE LEGAL RESPONSE AND ACCESS TO JUSTICE FOR SURVIVORS OF DOMESTIC VIOLENCE IN KYRGYZSTAN**

#### **3.1 Legal regulation and the contradiction**

The Law of the Kyrgyz Republic "On Safeguarding and Protection from Domestic Violence" dated April 27, 2017 defines the legal framework for the prevention and suppression of domestic violence, social and legal protection and protection of victims of domestic violence.

On February 21, 2021, Kyrgyzstan adopted the Law on amending major legislative acts of the Kyrgyz Republic, namely the Code of the Kyrgyz Republic on misconduct, the Criminal Code of the Kyrgyz Republic, and the Criminal Procedure Code of the Kyrgyz Republic.

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<sup>24</sup> According to the Law of the Kyrgyz Republic of July 5, 2002 No. 113 "On the courts of aksakals", the courts of aksakals (literally, the courts of elders) are public bodies created on a voluntary basis and on the basis of electivity and self-government, called upon to review materials sent to them in the established manner by the court. the prosecutor, other law enforcement agencies that have the right to consider criminal cases, and their officials in accordance with the current legislation of the Kyrgyz Republic, as well as cases of disputes between citizens in the cases and procedure established by this Law. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/1070?cl=ru>

<sup>25</sup> National Statistical Committee of the Kyrgyz Republic. URL: <http://stat.kg/en/statistics/prestupnost/>

<sup>26</sup> National Statistical Committee of the Kyrgyz Republic. Table 6.3. URL: <http://www.stat.kg/media/publicationarchive/74e01990-418c-4399-ad79-b235790fc8b7.pdf>

<sup>27</sup> Ibid Table 6.5

In the framework of this capstone project, I organized (online) working group consisting of lawyers, advocates, judges, prosecutors, law enforcement agencies and experts in the gender issues organized a discussion to analyze the amendments and their influence to the Laws. Analysis of these changes shows the following contradictions:

1. Article 1 of this Law supplements Article 39 of the Code of the Kyrgyz Republic on Misdemeanors with Part 3, which provides for a prohibition on the release of a person from liability, even if he compensated for the damage or eliminated the harm caused and reconciled with the victim of misconduct provided for in Article 75 (Domestic violence) and 76 (Failure to comply with the conditions of a temporary protection order) of the Code of the Kyrgyz Republic on misconduct.

Domestic violence, in accordance with the provisions of Article 75 of the Code of the Kyrgyz Republic on misconduct, means any deliberate actions of one family member against another family member or a person equated to him, violating the constitutional and other rights and freedoms of the victim, as well as causing him physical or mental suffering or inflicting harm to physical or mental development. Under the non-fulfillment of the conditions of the temporary protection order, in accordance with the norms of Article 76 of this Code, it is recognized as a violation of the conditions of the document issued in accordance with the Law of the Kyrgyz Republic "On Safeguarding and Protection from Domestic Violence", which provides state protection to the victim of domestic violence and entails the application of certain measures of influence to a person who has committed family violence.

In accordance with the amendments made to part 5 of article 23 of the Criminal Procedure Code, cases of the above misconduct were equated to criminal cases of crimes and attributed to public prosecution cases, for the commission of which criminal prosecution is carried out regardless of the submission of a complaint by the victim.

Ultimately, the misconduct stipulated by these articles moved out of a series of criminal prosecutions carried out in a private-public order, and in fact moved into a number of public ones.

The proposed changes violate the essence of the entire concept of misdemeanor legislation, since according to part 2 of Article 15 of the Code of the Kyrgyz Republic on misconduct, in accordance with this Code, an intentional or negligent act that causes harm that is not serious or significant in the understanding of the Criminal Code of the Kyrgyz Republic, as well as intentional an act that poses a threat of causing significant harm. Therefore, they were singled out as a separate type of insignificant criminally punishable acts.

In addition, the constitutional principle of equality of all before the law and the court, proclaimed in part 3 of Article 16 of the Constitution of the Kyrgyz Republic, is violated, since one and the same person for committing violence in the form of beatings, causing minor harm to health, causing less serious harm to health through negligence in relation to non-relatives (Articles 65-67 of the Code of the Kyrgyz Republic on misconduct) may be exempted from liability in connection with reconciliation with the victim, and for what has been committed against a family member or persons equated to them, as well as failure to comply with the requirements of the conditions of a temporary restraining order, shall not be exempted in connection with reconciliation with the victim.

2. Article 2 of the Law amended several articles of the Criminal Code of the Kyrgyz Republic. Thus, Articles 138, 139, 141, 142 of the Criminal Code of the Kyrgyz Republic have been supplemented with such qualifying signs that aggravate responsibility as causing harm to health in relation to a family member.

As a result of the introduction of these changes, the penalty for their commission began to vary from 2 years 6 months to 7 years 6 months in prison and were burdened with other penalties. In accordance with the provisions of Article 19 of the Criminal Code of the Kyrgyz Republic, these crimes are classified as grave crimes.

The introduction into the above articles of a special norm with aggravating qualifications "in relation to a family member" contradicts the requirements of article 75 of the General Part of the Criminal Code of the Kyrgyz Republic (Circumstances aggravating punishment), which contains an exclusive list of these circumstances.

In addition, the principle of guilt, laid down in the norms of Article 5 of the Criminal Code of the Kyrgyz Republic, is violated, which states that a person is subject to criminal liability only for those actions (inaction) and the consequences resulting from their commission, in respect of which his guilt has been established. The social status of a person as a family member cannot be regarded as an aggravating circumstance establishing his guilt due to violation of the above principle.

It can also be considered that when making changes to Articles 141 and 142 of the Criminal Code of the Kyrgyz Republic, the logic of determining the severity of the punishment and the rules of legislative technique were violated, and the new article 179 introduced into the Criminal Code of the Kyrgyz Republic contradicts the norms of article 139 of the same code and article 76 of the Code of the Kyrgyz Republic on misconduct. The contradictions of these three norms that have arisen can lead to a violation of the structure of the qualifications of the actions of the guilty persons.

### 3.2 Major gaps in the legal response to domestic violence

In 2017 on 28<sup>th</sup> April Kyrgyzstan adopted the Law ‘On Safeguarding and Protection from Domestic Violence’. In the Opinion of the OSCE Office for Democratic Institutions and Human Rights regarding compliance of the draft Law of the Kyrgyz Republic ‘On Safeguarding and Protection from Domestic Violence’ with OSCE commitments and international standards in the field of human rights requested by the group of MPs it was noted that the draft Law contains many positive aspects and, in general, corresponds to international standards in the area of prevention of domestic violence and protection against it. In particular, the conclusions welcome the fact that the draft Law sets out in detail the functions and responsibilities of various government departments, the judiciary, the media and civil society<sup>28</sup>.

As far as the new Criminal Code (entered into force on 1 January 2019) is concerned, it still does not provide for more specific domestic violence related acts. The definitions of rape and sexual assault by the Code still fall short of the relevant international standards. Specifically, even though the Code does not refer to the victim’s and the perpetrator’s marital/relationships statuses, it does not go as far as to expressly criminalize sexual violence between spouses, regular or occasional partners and cohabitants by providing that a preexisting relationship shall not be a defense to rape/sexual assault.

Likewise, stalking (understood as intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing him/her to fear for his/her safety) is not criminalized by the Criminal Code or Code of Criminal delicts, even though stalking is extremely common as a form of violence in estranged couples and is often a precursor to other, life-threatening criminal conduct. The article 19 of the draft Law further provides that local self-government bodies shall ensure interagency co-ordination and interaction with other entities working in this field at the municipal level via the establishment of special bodies or local committees. However, the draft Law does not specify the respective roles and responsibilities (for instance for processing information, assessing problems/risks, developing and implementing individual action plans, and evaluating the effects of the interventions) of the different entities involved in these local co-ordination/interaction mechanisms/teams. In particular, the body/person meant to lead and coordinate these efforts should be clearly designated. Consequently, Article 19 of the draft Law should state the composition of such coordination mechanisms and specify which entity shall have the lead appointment and

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<sup>28</sup> Annex 1. The Accompanying Note to the draft Law ‘On Safeguarding and Protection from Domestic Violence’.

coordination role, while clarifying the respective roles and responsibilities of the entities involved. This is necessary because, often, domestic violence cases are emergency situations where rapid referral and coordination is essential.

As per the nature and scope of protection orders issued by the interior affairs bodies according to Article 32 of the Law the restraining measures envisaged are: prohibition of violence and prohibition of direct and indirect contact with the victim. At the same time the Law does not specify what can be defined as a “direct and indirect contact” creating confusion for the law enforcement officers. The nature and scope of these measures could be further extended, to include the confiscation of weapons, the order that the perpetrator should keep a specified distance from the residence, school, workplace or any other specified place of the victim, children of the victim or other family member, granting temporary custody of children to the non-violent parent, and/or requiring the payment of certain costs and fees.

An Order to temporarily vacate the premises or limit contact with child(ren) continues to require a court authorization and cannot be imposed on the spot by the law enforcement. The law does not provide for the concept of exigent circumstances. It is therefore necessary to introduce the risk assessment tool for the first line/responding police officers. Police-issued protection orders are intended as emergency stopgap measures only; therefore, orders that contain far-reaching restrictions – such as a residence exclusion order or an order to keep at a specified distance from child(ren) – may only be imposed where exigent circumstances exist, for instance the perpetrator’s continued presence on the shared premises puts the victim at risk of imminent harm).

### **3.3 Functional analysis**

The suggested analysis is supported by the functional analysis in the Bishkek Police Department conducted with the support of the “Rule of Law Programme in the Kyrgyz Republic – phase 2”, the project financed by the European Union and implemented by the consortium of public European institutions. The study in question was conducted by the consortium member - the Ludwig Boltzmann institute of fundamental and human rights. My participation in the analysis covered the issues connected with the immediate reaction to domestic violence. The analysis was conducted among the operators of 102 emergency call line, public safety service which includes duty stations and district police officers. The study was made in the form of focus groups with the officers of said departments. While the

functional analysis was conducted to cover the broad range of issues concerning organization of police work, additional focus was made on the issue of domestic violence.

The Ministry of Internal Affairs is obliged to immediately take measures to eliminate the threat to the life or health of a victim of domestic violence and other family members or persons equated to them; detain a person who has committed domestic violence, issue and renew a protection order; bring the person who committed domestic violence to criminal responsibility<sup>29</sup>.

The protection order is issued for a period of three days and can be extended at the request of the victim of domestic violence for thirty days. The abuser must fulfill all the conditions specified in the order. Victims have the right to receive social and psychological assistance in state and municipal institutions, as well as in social service institutions<sup>30</sup>.

The internal order of the Ministry of Interior #970 from 14 November, 2017 complements the “Law on Safeguarding and Protection from Domestic Violence” and provides the set of instructions on the line of work for the police officers. The major loophole of this crucial internal instruction is that it was never updated in accordance with the new Criminal Code, Criminal procedure code and Code on criminal delicts which came in to force in 2019 and were adopted in 2017. The new criminal legislation envisaged conceptually new approach to policing, including institutional reform of the law enforcement and shift from soviet to a “detective-investigator-prosecutor” model of criminal investigation and prosecution. The said internal instruction still refers to “administrative responsibility” abolished with the new legislation; mentions “instigation of criminal case” which was abolished with introduction of the Unified register of crimes and delicts (according to the new Criminal procedure code, the investigation starts immediately or in 24 hours after registration in the Unified register of crimes, vis-à-vis the old practice of long instigation of the case by investigator and prosecutor. Most of the times at this stage of investigation most of the “inconvenient cases” like torture or gender-based violence were terminated or delayed); doesn’t instruct on rules of detention and bringing detainee before investigative judge.

The existing instruction sets the following procedure with regards to issuing the protection order: the duty stations to react immediately to the incident of domestic violence, register each case of reported incident in the police logbook. Not less than 2 police officers have to arrive at the location, call the emergency, collect statements and then investigator issues

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<sup>29</sup>Article 24 of the Law of the Kyrgyz Republic "On Safeguarding and Protection from Domestic Violence", April 27, 2017

<sup>30</sup> Ibid Article 35

a protection order if deemed necessary. The duty station then registers the protection order and distributes protection orders among district police officers. The district police officer during 3 days conducts monitoring of the execution of conditions of protection order by attending to or calling to the victim. The protection order then can be prolonged after the official statement to the investigator.

The order of work mentioned above grants discretion to each involved officer and doesn't guarantee safety to the victim but rather creates corruption opportunities. In addition to the inconsistency with the criminal legislation, it implies standardized approach to every case of domestic violence and does not contain standard operation procedures to different procedural actions, implies registration and statistical monitoring on paper rather than use of IT solutions. One of the most important factors in prevention and escalation of violence is the obligation of perpetrator to go through correctional program, which requires coordinated response of law enforcement and Ministry of Health and social development. Unfortunately, the correctional program has not been launched fully and lacks necessary infrastructure. In addition, introduction of a more victim-centered approach, the instruction should include a separate list of available services to a victim of violence, i.e. shelter or legal advice. On the latter, victims of domestic violence should be immediately (upon consent) connected with State guaranteed legal support.

### **3.4 International practice: legal response to domestic violence in EU countries**

Analysis of the legal response and mechanisms to provide safety to the victims of domestic violence suggests that almost all member states have a criminal protection order at the pre-trial stage.<sup>31</sup> The said analysis suggests that barring orders – the form of protection order which allows police officers for emergency removal as a short-term measure – proved to be effective and useful<sup>32</sup>. In some states, with the barring order issued the assistance agencies (social and legal) are automatically alerted and immediate help is available for a family. This approach of combination of both short-term measures to provide safety for a victim and long-term measures deemed to be very fruitful in terms of prevention of further violence and providing protection to the victims.

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<sup>31</sup> Van der A., S. Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here?. *Eur J Crim Policy Res* 18, 183–204 (2012). URL: <https://doi.org/10.1007/s10610-011-9167-6>

<sup>32</sup> Ibid.

The study suggests a number of different approaches with EU countries on combating domestic violence, including opportunity to issue barring order by civil courts or quasi-criminal courts without instigation of full criminal procedure. This approach is popular in Scandinavian countries, where both pre-trial/post trial barring orders and protection orders issued by civil courts are available.

Below is the table with overview of protection order restraining measure available in 5 EU member states

| Country               | Pre-trial protection order/barring order  | Civil protection order  |
|-----------------------|---|---|
| Germany               | Yes<br>Issued by police based on the risk assessment bans any contact, proximity, etc. and takes effect immediately <sup>33</sup> . If protection order is violated, the victim gets access to services of bailiff, perpetrator can face, imprisonment for up to one year, or a fine. <sup>34</sup> | Yes<br>Family court <sup>35</sup> may issue temporary protection order upon request, possibility to conduct hearing at the day of appeal <sup>36</sup> or award an unlimited protection order during the consideration of the case. |
| Austria               | Yes <sup>37</sup>   | Yes <sup>38</sup><br>Civil interim injunctions issued for up to 12 months and extension upon violation <sup>39</sup> and is considered as civil violation   |
| Belgium               | Yes<br>a conditional release from preventive custody;<br>a conditionally suspended sentence are possible  | Yes<br>Civil protection order and violation is criminalized   |
| Estonia <sup>40</sup> | No barring orders<br>Post-trial protection order issued by court for up to 3 years<br>Pre-trial prosecutor, investigative judge or court issues protection order  | Yes<br>Violation is a criminalized  |

<sup>33</sup> Section 3.5 of the Länder Annex

<sup>34</sup> Ibid

<sup>35</sup> Greater Protection in Cases of Domestic Violence Information on the Act on Protection Against Violence, Federal Ministry of Justice and Consumer Protection URL: <https://www.bmfsfj.de/resource/blob/121760/b227b8b02448a576045c444efe81b792/mehr-schutz-bei-haueslicher-gewalt-englisch-data.pdf>

<sup>36</sup> Sections 49(1) and 214(1) first sentence FamFG

<sup>37</sup> Recommendations adopted by the Committee of the Parties. URL: <https://rm.coe.int/recommendations-cop-austria/1680783ffb>

<sup>38</sup> Comments submitted by Austria on GREVIO's final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report). URL: <https://rm.coe.int/final-comments-gov-austria/168074fd70>

<sup>39</sup> van der Aa, S. Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here?. Eur J Crim Policy Res 18, 183–204 (2012). <https://doi.org/10.1007/s10610-011-9167-6>

<sup>40</sup> Ibid.

|                        |  |    |
|------------------------|--|----|
| Portugal <sup>41</sup> | <p>Yes</p> <p>Magistrate issues pre-trial protection order</p> <p>Post-trial issued by court as part of suspended sentence, probation or conditional release from prison</p> | No |
|------------------------|--|----|

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<sup>41</sup> Ibid.

## CONCLUSION

Based on the legal, statistical and functional analysis conducted in the framework of this research the conclusion can be made that Kyrgyzstan is lacking a comprehensive strategy on combating domestic violence and providing safety, both immediate and long-term for the victims of violence. The level of legal response in terms of timeliness, effectiveness and lack of victim-centered approach can no longer be accepted. In addition, there seems to be no interest in devising such comprehensive strategy, leading state agencies, as well as gender NGOs and international organizations lack vision on formulating systemic approach. Functional analysis of the key departments at the Bishkek police department demonstrated that little attention is paid to provision of safety and addressing needs of victims. There's a severe need to conduct systemic and thorough research into domestic violence legislation to address the current vacuum. Different regimes to issue and execute protection and barring orders should be examined based on available international practice and accumulated internal experience. There's of course an issue of insufficient infrastructure and lack of capacity of the internal affairs bodies and other involved state and non-state agencies to provide comprehensive support.

Despite the provisions in the law that the prosecution against the perpetrators is supported by law enforcement agencies, including the prosecutor, which in its essence should meet the interests of victims, however, in practice, victims cannot receive the proper level of protection. In the opinion of the interviewed judges, the most typical mistakes of the investigation are the formal attitude towards victims, unwillingness to take full-fledged measures to provide protection; the implementation of formal interrogations of the accused and witnesses; violation of the norms of the Criminal Procedure Code of the Kyrgyz Republic in terms of the timely collection of evidence.

The participation of the prosecutor in such cases, according to the research, demonstrates a low professional level and lack of professional interest in protecting the rights and interests of victims, which is expressed in his speech only with an accusatory speech, therefore, one gets the impression that the courts are not observing the adversarial principle. According to representatives of crisis centers and child protection centers, court sessions are often postponed due to the absence of a prosecutor, as well as a result of their frequent change, who at the session ask to give them time to familiarize themselves with the case materials.

In conclusion, it should be noted that despite the legislatively established guarantees of the rights of victims, they often face a system that is not ready to recognize their specific status, provide real protection, assistance and respect for their right to a fair trial.

Therefore, the following recommendations could be made to address the most acute needs in terms of response to the needs of victims:

- Intervention in both the pre-trial and the post-trial stage by introducing barring and protection orders with viable restraining measures;
- Align internal Ministry of internal affairs instructions with current legislation;
- Introduce risk assessment tool to tailor each restraining measure;
- Coordinate closely with assisting agencies to alert them immediately;
- develop integrated IT-solution to monitor and execute restraining orders. The solution would include register of orders and mobile solution for police officers with an oversight mechanism for prosecutors;
- provide access to the database of victims of domestic violence so that lawyers are automatically set through the free legal aid system and give legal advice to victims.

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